IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 6313 of 2005(B)

PETITIONERS:
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1. **THE ST.JOHN'S EDUCATIONAL SOCIETY REG.NO.Q 77/79, KUNDARA, KOLLAM, REPRESENTED BY ITS SECRETARY.**

2. **Y.DANIEL, MANAGER, ST.JOHN'S SCHOOL, EZHUKONE, KUNDARA, KOLLAM.**

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE TAHASILDAR, KOTTARAKKARA.**

BY GOVERNMENT PLEADER SRI.TEK CHAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.6313/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE ISSUED BY THE REGISTRAR OF SOCIETIES TO ST.JOHN'S EDUCATIONAL SOCIETY DT. 2.2.79.

EXT.P2:- COPY OF THE CERTIFICATE DT. 13.1.03 ISSUED BY THE EZHUKONE GRAMA PANCHAYAT.

EXT.P3:- COPY OF THE ORDER ASSESSMENT DT. 29.11.02 ISSUED TO THE PETITIONERS.

EXT.P4:- COPY OF THE JUDGMENT DT. 29.1.03 IN OP. NO.2665/03.

EXT.P5:- COPY OF THE ORDER DT. 5.1.04 WRONGLY TYPED AS 2004 INSTEAD OF 2005 NO.B3-20337/02 ISSUED BY THE 2ND RESPONDENT.

ANNEXURE R2(a):- COPY OF THE LETTER DT. .5.2.03.

ANNEXURE R2(b):- COPY OF THE LETTER DT. 1.10.03.

/TRUE COPY/

P.A. TO JUDGE

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K.BALAKRISHNAN NAIR, J.

Writ Petition (C) No.6313 of 2005-B

Judgment

The first petitioner is a charitable society, which is running a school called St.Johns School, Ezhukone. The second petitioner is its Manager. The building, housing the school was constructed between 1979 and 1982, it is submitted. The same was never assessed to building tax. So, the second respondent assessing authority issued Ext.P3 assessment order to the petitioners. The petitioners challenged the said order before this court and this court, by Ext.P4, quashed the said order. The Tahsildar was directed to hear the petitioners and make a fresh assessment. It was also ordered that if the Tahsildar has got any doubt whether any of the buildings has to be granted exemption, he shall refer the matter to the Government under Section 3(2) of the Kerala Building Tax Act. Later, the Tahsildar issued Ext.P5 fresh assessment order. The said Officer declined to grant exemption for some of the buildings. This Writ Petition is filed, challenging Ext.P5. According to the petitioners, the Tahsildar has no authority or power to reject their claim for exemption and so, the matter should have been referred to the Government.

2. The 2nd respondent has filed a report, in which it is submitted that the buildings where the classes are taken are already exempted. The buildings in which the canteen and hostel are run, are subjected to building tax by Ext.P5. Therefore, Ext.P5 is legal and valid, it is submitted.

3. The claim of the petitioner for exemption in relation to some buildings, has been rejected by the Tahsildar. Under the scheme of the Act, the same is impermissible. Only the Government can take a decision if there is any dispute regarding the eligibility for exemption. In view of the above position, Ext.P5 is quashed. The 2nd respondent shall forward the files to the Government and the Government shall afford an opportunity of being heard to the petitioners and take a decision on the claim of the petitioners for grant of exemption to the buildings, housing the canteen and hostel, within three months from the date of receipt of the files from the Tahsildar. The Tahsildar shall forward the files to the Government within one month from today.

The Writ Petition is disposed of as above.

10.12.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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